IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5592 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADANI EXPORTS LTD

Versus

UNION OF INDIA

Appearance:
MR KAMAL TRIVEDI for M/S TRIVEDI & GUPTA for Petitioner
MR DN PATEL ld.Central Govt.Standing Counsel for
Respondent nos.1 to 4.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 20/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Mr.Kamal Trivedi, learned Counsel for the petitioners seeks to delete respondent no.5, i.e. Bank of India from the array of the respondents. He is permitted to do so.

Rule. Mr.D.N.Patel waives service of Rule on behalf of respondents nos.1 to 4.

Learned Counsel for the petitioners has submitted that the order dated 31st Jan.2001 issued on 23rd March 2001 passed by the Commissioner of Customs and Central Excise, Panaji, Goa is under challenge in appeal before the CEGAT Bench, at Mumbai. It has been submitted that the appeal was filed before the CEGAT in May 2001 along with the stay application, but so far the stay application has not been taken up and the appeal is pending. It is given out that the CEGAT is not working to its full strength and for the last few months only one Bench is functioning. It has also been submitted that the petitioners had furnished Bank Guarantee which is valid upto 30th Sept.2001 and the petitioners also undertake to renew the same till the disposal of the matter by CEGAT. Learned Counsel has made reference to the decision in the case of Shree Cement Ltd. v. Union of India and ors., reported in 2001 (44) RLT at pg.461 in which it was ordered by the Rajasthan High Court that during the pendency of the stay application before the CEGAT, no coercive measure of recovery should be resorted by the Revenue. It is submitted that on these lines, an application was moved by the petitioner on 14th June 2001 to the Deputy Director, Directorate of Revenue Intelligence at Ahmedabad that, during the pendency of the matter before the CEGAT, the coercive measures may not be resorted to and the Bank Guarantee may not be encashed. However, a letter dated 10th July 2001 has been sent to the Bank of India by the Assistant Commissioner of Customs (A) for encashment of the Bank Guarantee.

It has been submitted that in several identical matters of this nature, the orders have been passed against the coercive steps for recovery in cases where the appeals along with the stay applications are pending before the CEGAT and the matters are not being taken up. This factual aspect that the CEGAT is not working to its full strength and only one of its Benches is functioning for the last few months is not disputed by the learned Counsel for the respondents, but it has been submitted that a second Bench has now started functioning. The

fact that in matters of this nature, the orders have been passed against coercive measures to be taken is also not disputed.

In the facts and circumstances of this case, having heard learned Counsel for both the sides and having gone through the papers, we hereby order that the coercive measures for recovery of the amount in question as ordered by the Commissioner of Customs and Central Excise vide his order dated 31st Jan.2001 issued on 23rd March 2001 shall not be taken till the stay application is heard and appropriate orders are passed thereon by the CEGAT. Whereas the Bank Guarantee has been invoked, we order that the respondents shall not proceed to get the same encashed from the Bank of India, Ahmedabad Corporate Banking Branch, Ahmedabad till the appropriate orders are passed in the stay application by the CEGAT. However, the Bank Guarantee as given by the petitioners which is valid upto 30th Sept.2001 shall be renewed in case no orders are passed by 30th Sept.2001 in the stay matter and the petitioners shall stand by the undertaking as mentioned in their letter dated 14th June 2001. CEGAT, West Zonal Branch, at Mumbai shall take up the stay application in the pending appeal at the earliest possible opportunity, but in no case, later than a period of eight weeks from today as prayed by the learned Counsel for the respondents.

This Special Civil Application is decided and disposed of accordingly and the Rule is also decided in the same terms.

20th July 2001 (M.R. Calla, J.

(N.G. Nandi, J.)

Sreeram.